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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

10 UNITED STATES OF AMERICA,) 3:14-cr-00040-HDM-VPC
11 Respondent/Plaintiff,) 3:16-cv-00253-HDM
12) ORDER
13)
14 vs.)
15 CELSO ALVARADO,)
16 Petitioner/Defendant.)
17 _____)

18 Before the court is defendant's motion to voluntarily withdraw
19 his motion to vacate, set aside, or correct his sentence pursuant 28
U.S.C. § 2255 filed on April 24, 2017 (ECF No. 36). The United States
has not responded.

20 On May 13, 2016, defendant filed a *pro se* § 2255 motion
21 requesting the court grant his motion or, in the alternative, appoint
22 counsel (ECF No. 30). On May 19, 2016, Assistant Public Defender
23 Nisha Brooks-Whittington filed a notice of appearance (ECF No. 31).
24 Pursuant to the District Court's First Amended General Order dated
25 April 27, 2016, counsel filed an abridged motion to vacate, set aside,
26 or correct sentence pursuant to 28 U.S.C. § 2255 on June 22, 2016 to
27 toll the statute of limitations (ECF No. 32). On December 14, 2016,
28 counsel filed a § 2255 motion on defendant's behalf (ECF No. 33).

1 Defendant requests to withdraw his § 2255 motion (ECF No. 33).
2 pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i). The
3 United States did not file an opposition to the § 2255 motion.
4 Accordingly, the court will allow defendant to withdraw his § 2255
5 motion. In granting the motion to withdraw, the court makes no
6 determination as to whether a new § 2255 motion that defendant may
7 file in the future would constitute a second or successive motion and
8 therefore require certification from the Ninth Circuit Court of
9 Appeals before being filed in U.S. District Court. See 28 U.S.C.
10 § 2255(h).

11 IT IS THEREFORE ORDERED that defendant's motion to voluntarily
12 withdraw his motion to vacate, set aside, or correct his sentence
13 pursuant 28 U.S.C. § 2255 (ECF No. 36) is **GRANTED**.

14 IT IS FURTHER ORDERED that defendant's motion to vacate, set
15 aside, or correct his sentence pursuant 28 U.S.C. § 2255 (ECF Nos. 32,
16 33) is **WITHDRAWN**.

17 IT IS FURTHER ORDERED that defendant's *pro se* motion seeking
18 § 2255 relief or, in the alternative, appointment of counsel (ECF No.
19 30) is **DENIED as moot**.

20 DATED: This 25th day of July, 2017.

Howard D McKibben
UNITED STATES DISTRICT JUDGE